

### **REMARKS**

As an initial matter, Applicants respectfully note that their initial inquiries into this newly asserted Restriction Requirement were made while the Primary Examiner in this case, Dr. James Schultz, was out of the office. Applicants gratefully acknowledge the generosity of Ms. Reynolds and Mr. Wang in taking the time to review this Restriction Requirement and grant Applicants a telephonic interview following their inquiries regarding this Action.

In the course of Applicants' telephonic interview with Ms. Reynolds and Mr. Wang, Mr. Wang assured Applicants that the instant Restriction Requirement would be withdrawn if the recently-added dependent claims 6-15 were cancelled by the Applicant. Accordingly, in an effort to facilitate prosecution of this application, and not in acquiescence to the Restriction Requirement itself, Applicants have elected to cancel claims 6-15, without prejudice to prosecute at a later date, with this response.

Notwithstanding assurances by Mr. Wang that this response would be deemed compliant and responsive in the absence of an official election of the invention by Applicants if they were to cancel the above-cited recently-added claims, Applicants further include the following election with traverse in order to preserve their rights in this matter.

To the extent that a provisional election with traverse is deemed necessary in this instance, Applicants provisionally elect with traverse restriction group I, which presumably includes the portions of claims 1, and 3-7 that correspond to oligonucleotides with modified CpG motifs that are targeted to HIV viral targets, as well as related methods of their use.

In support of this formal election with traverse, Applicants respectfully note that, for a restriction requirement to be proper, it must establish that both:

- (A) The inventions are independent or distinct; and
- (B) There must be a serious burden on the examiner if restriction is required (see MPEP §803).

Applicants respectfully assert that the restriction requirement presented has not established both of these criteria. In particular, Applicants note that a search of the relatively generic method of use claims 3 and 4 would necessarily address the patentability of the recently-added claims 6-15, which depend from these claims. Accordingly, there would be no “serious burden” on the examiner in searching all of the previously-presented claims together. Nevertheless, Applicants have, as provided, canceled claims 6-15 with this Action.

### **CONCLUSION**

In summary, Applicants have canceled recently-added claims 6-15, which appear to have prompted the instant Restriction Requirement. Applicants assert that, as decided in their April 20<sup>th</sup> telephonic interview with Ms. Reynolds and Mr. Wang, this action obviates the grounds for the Restriction Requirement. Accordingly, Applicants respectfully request reconsideration and withdrawal of the Restriction Requirement. Nevertheless, to the extent that the Examiner would deem this response non-compliant without at least a formal provisional election with traverse, Applicants have provided such in order to preserve their rights in this matter.

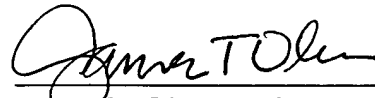
In view of the foregoing remarks, Applicants respectfully submit that the pending claims are in condition for allowance. If a telephone interview would advance prosecution of the application, the Examiner is invited to call the undersigned at the number listed below.

The time for responding to this Action has been extended to May 24, 2005 by the accompanying petition for a three-month extension of time and payment of fee. No further fees are believed to be due in connection with the filing of this Amendment, however the

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Commissioner is authorized to debit Deposit Account No. 08-0219 for any required fee necessary to maintain the pendency of this application.

Respectfully submitted,



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